

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0534P

Gross Income Tax

Fiscal Years Ending 01/31/95, 01/31/96, and 01/31/97

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer, incorporated under the laws of Michigan on October 31, 1939 was audited for fiscal years ending 01/31/95, 01/31/96, and 01/31/97. It has one Indiana location. Upon audit it was discovered that the taxpayer failed to report coop advertising credits earned from various sources.

Taxpayer reported delivery charges at the incorrect rate of tax, had incorrect bad debt write offs and failed to add back MSBT in 1997. No adjustment was made to the sales apportionment factor for the coop advertising receipts as the auditor states it would only have a nominal effect on the audit results.

In a letter dated September 4, 1998, taxpayer protested penalties assessed and states the field audit resulted in liabilities and refunds for withholding and sales tax, and that no interest was computed or credited for the sales tax overpayments. Taxpayer request that the overpayment of sales taxes be netted with the tax due for the period involved in computing the interest owed on the assessments and that they be given appropriate credit for interest due on the net refund amount.

Taxpayer requests that the department waive the negligence penalty and interest.

I. **Tax Administration** – Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for all years of the audit because it failed to correctly report all taxable gross income.

Taxpayer requests the penalties be waived since there was no additional tax due as a result of the examination of the withholding tax and sales tax audit. Taxpayer states the income tax assessment involved one issue of receipts that was not included in the income tax return. This was due to a reasonable error in preparing the tax return and not willful neglect or an intentional act to evade the tax.

Each audit stands alone. Taxpayer was assessed a penalty for underpayment of withholding tax and gross income tax. The department cannot net liabilities against other liabilities in order to avoid penalty and interest.

FINDING

Taxpayer's protest is denied.

II. **Tax Administration** – Interest

DISCUSSION

Taxpayer protests the assessment of interest and believes no interest was calculated for the sales tax overpayment.

Taxpayer had a withholding and sales tax audit that resulted in a net refund of \$781.27. The department applied the refund for the sales tax audit to the withholding tax liabilities and income tax liabilities. Interest is calculated for each year of assessment or refund. \$752.77 was applied to liability 95-0424649, \$339.55 paid liability 95-0424305, \$10.00 paid liability 95-0424307, \$10.00 paid liability 97-0237118 and \$83.50 paid liability no. 97-0237117 or a total of \$1,195.82 which is clearly more than the net refund of \$781.27.

The department has calculated interest for all years of the audit for all tax types

FINDING

Taxpayer's protest is denied.